

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
PANAMA CITY DIVISION

LEGAL MAIL
PROVIDED TO
FLORIDA STATE PRISON
DATE 2-17-06 FOR MAILING.
INMATES INITIALS RB

RAMON ARMAS BORROTO, JR.
Plaintiff

vs.

CASE NO: 5:04CV165-RH/WCS

MCDONALD, PATE, SPETH,
MCKENZIE, and KENT
Defendants

OFFICE OF CLERK
U.S. DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
PANAMA CITY, FL 32401

06 FEB 21 PM 1:50

FILED

PLAINTIFF'S RESPONSE TO DEFENDANT'S SUPPLEMENT TO DEFENDANT'S SPECIAL REPORT

Plaintiff RAMON ARMAS BORROTO, JR., pro se, hereby responds to the Defendant's supplement to Defendant's Special Report, as follows:

PLAINTIFF'S SUPPLEMENT OF FACTS

Inmate are not pulled out simply for complaining to nurses for a medical evaluation. Inmate's must first fill out a sick call form, it must then be turned in to a nurse, the inmate will then be seen within one or two days. The only time an inmate will be initially reviewed is if he initiates a medical or psychological emergency. Nurse Kent claims that she had the inmate pulled out of his cell after he complained of sinus problems. Therefore the plaintiff had neither previously submitted a sick call form, nor turned of ~~into~~ one in to the nurse when she came that morning. This nurse therefore had no reason to have the plaintiff removed from his cell. Due to the medical records being kept in the medical department and due to the nurse not making rounds while in possession of every inmate's medical file she could not have spontaneously pulled the plaintiff from his cell and also have been in possession of his medical records. F.S. 945.6037, Procedure #403.006, Procedure Title sick call process section (4)(g) state's in bold letters that:

"Health care staff performing sick-call must have the inmate's record available at the time the inmate is evaluated".

This procedure is set forth so that a nurse can properly make correct notations in regards to evaluation, vital signs, time, and medications given to the plaintiff or any other inmate for that matter. This is the main reason for the the sick call procedure.

Nurse Kent does not claim that she never witnessed the plaintiff being assaulted only that she did not witness a physical assault "such as Borroto has alleged". She does not deny that an assault took place, but, simply that she did not see it the same way as Mr. Borroto. The question is what kind of assault did she witness, and what occurred.

This nurse neither denies that the plaintiff had been masturbating, ^{that} only she does not recall whether the plaintiff engaged in the appropriate action. The plaintiff finds this hard to believe after this nurse made a big scene about it yelling at the plaintiff loud enough that the whole dorm heard it.

The plaintiff further states that he finds it hard to believe that this nurse who can not "specifically" remember Mr. Borroto, or not remember if the plaintiff had been masturbating while talking to her or not, can be so certain of not witnessing an assault on the same person, as he so describes.

Inspector YAW claims that "evidence obtained during the course of the investigation was not sufficient to support the Allegation of physical by Ofc. McDonald". As can be seen by the evidence presented by Inspector YAW's own Report, (see exhibit 1 on pages 3 and 5), the report contains fraudulent evidence. There is never gonna be sufficient evidence to support an inspector general's investigation when said investigative Reports contain falsified evidence. In Inspector YAW's investigative Report # 02-13942 on Page 3 under "Other Pertinent Information:", states:

"Review of the video tape-recording of quad four in 'G' dormitory during the morning of November 28, 2002, revealed that inmate Borroto was not taken out of his cell and that no one entered his cell between 7:AM and 11:AM"

Investigative Report # 02-13942 on page 5 notes the same.

Inspector YAW reviewed a video tape-recording for the date of November 28, 2002, but states that said video tape-recording shows that the plaintiff was neither taken out of his cell nor did anyone enter his cell between 7:AM and 11:AM that morning. Yet now the defendant's are trying to use Inspector YAW's report and investigation as evidence that the assault is unsubstantiated, when the defendant's are now claiming that the plaintiff was pulled out by the nurse for a medical evaluation between 7:AM and 11:AM of that same morning. Inspector YAW's claims that the video he reviewed shows the plaintiff never exited his cell. The fraudulence of inspector's report can easily be seen by both the plaintiff's assertions as well as the defendant's now claiming that the plaintiff was taken out of his cell for a medical evaluation.

Inspector YAW states that inspectors "customarily order transfers in cases where inmate's Alleged physical abuse". What the Inspector did not note for the court is that such transfers occur when there is a strong suspicion that the inmate's Allegations of physical abuse are true. Inspector KRAUS who initially began the investigation also investigated another inmate the same day, but did not transfer the ~~plaintiff~~ inmate. Inspector KRAUS must have had a strong suspicion that the plaintiff's Allegations were true because not only

did he transfer the plaintiff but he did so immediately, and such cases are rare. Inspector Yaw tries to give the court the impression that all an inmate has to do is allege staff abuse in order to get a transfer. Furthermore Inspector Yaw's claims that it is not "uncommon for inmates to fabricate allegations of abuse to exploit this precautionary measure". The plaintiff cannot speak for other inmates, but the plaintiff does not get any gain out of obtaining a transfer from one C.M. institution to another except leaving an environment where he was in constant fear of further abuse, and fear for his life. There were only 3 other prisons which housed C.M. inmates. Furthermore if the plaintiff's sole purpose was to allege staff abuse to obtain a transfer this case would not be before this court at the moment because the plaintiff was transferred on December 17, 2002. The plaintiff was in fact assaulted by Ofc. McDonald, in the presence of all defendants and this is the reason for alleging staff abuse ~~thereas~~ and for filing the present complaint.

PLAINTIFF'S RESPONSE TO DEFENDANT'S NEW ALLEGATION CLAIM

The plaintiff never presented a new allegation when he claimed he was not examined by nurse Kent. The plaintiff was merely responding to the defendant's allegation that the plaintiff was pulled out of his cell for a mere medical evaluation. As stated in the original proceedings the plaintiff was taken out of his cell, to a room containing the defendant's, then assaulted. The plaintiff is not presenting a new allegation. The defendant's in their special report attempt to justify their taking the plaintiff out of his cell by saying it was a medical evaluation. Once the Plaintiff was presented with this false allegation, he responded refuting the defendant's allegations of a medical evaluation and demonstrating for the court that this allegation by the defendant's is false.

The second Allegation of new Allegation where plaintiff claims that he had been masturbating while he spoke to the nurse is new but true. The plaintiff is working pro se and was not aware that he had to bring this Allegation up when filing his original action. The plaintiff was simply informing the court of the real reason he was taken out of his cell, since the defendant's tried to say it was for a medical evaluation.

PLAINTIFF'S RESPONSE TO DEFENDANT'S UNDISPUTED FACTS.

The defendant's Allegation that in the early hours of November 29, 2002 the plaintiff told an officer that staff hit him in his hands and ear. This Allegation is false. The plaintiff wrote an affidavit the same morning and also Nurse J. Conger who examined the plaintiff, noted on the emergency room record (see exhibit 2), that the plaintiff states "he was hit on his head, ear, and abdomen". Nowhere

does the plaintiff allege in writing nor verbally that he was ever hit in his hands. Therefore this is not an undisputed fact.

STATEMENT OF UNDISPUTED FACTS

1. The plaintiff RAMON ARMAS BORRERO, JR., was on November 28, 2002, taken out of his cell to a room which contained Nurse Kent.
2. That the plaintiff did declare a staff assault within 24 hours of the incident.
3. The the plaintiff was evaluated by Nurse Conger.
4. That he sustained injury Although not life threatening.
5. That routine sick call evaluations are not conducted on weekends or holidays.
6. That November 28, 2002, was in fact the holiday of Thanksgiving.
7. That Nurse Kent, OFc. McDonald, OFc. Pate, Sgt. McKenzie, and OFc. Speight were on duty on November 28, 2002.
8. That plaintiff did not allege a staff assault during the same shift, as the incident occurred, out of fear of further abuse by the same officer's.
9. That the plaintiff went outside to recreation the next day.
10. That plaintiff tried to manipulate a transfer through various means, but never before the date on which he was assaulted.
11. That Inspector Yaw's Investigative Report state's that the plaintiff was never taken out of his cell and that no officer entered his cell, on November 28, 2002.
12. That said report is fraudulent.
13. That F.S. 945.6037, Procedure # 403.006 governs the sick call process.
14. That inmates in Close Management fall under special housing.
15. That inmates are not suppose to be seen by medical personnell without initiating the sick call process by first submitting a sick call form.
16. That health care staff performing sick call must have the inmate's record available at the time the inmate is evaluated.
17. That nurse Kent did not possess plaintiff's record during said time.
18. That Nurse Kent does not "specifically" remember the plaintiff.
19. That plaintiff was in fear of his life due to his being housed in the same dorm around the same officers who assaulted him or watched.

1. DEFENDANT'S SPECIAL REPORT SHOULD BE DENIED

In the present action the plaintiff claims that he was assaulted physically by an officer while in the presence of other officers and a Nurse, ~~The~~ plaintiff for masturbating while speaking to the nurse. The plaintiff claims that his 8TH Amendment's Freedom from Cruel and Unusual Punishment Right and his 4TH Amendment's Freedom from Assault was violated when OFc. McDonald physically assaulted the plaintiff. The plaintiff's 8TH Amendment Right was further violated by the fact that while OFc. McDonald assaulted the plaintiff, Sgt. McKenzie, OFc. Pate,

Ofc. Speight, and Nurse Kent were present and failed to intervene in said assault constituting deliberate indifference.

The force used in this matter was entirely unnecessary and was used for the sole purpose of inflicting harm as a form of punishment for masturbating while talking with the nurse and therefore the force was used in a malicious and sadistic manner, and thus violates the plaintiff's constitutional rights.

The standard necessary for granting a summary judgment motion is, "if the pleadings, depositions, answers to interrogatories and admissions on file, together with the Affidavits, if any show that there is no genuine issue as to any material fact." See Celotex Corp. v. Catrett 477 U.S. 317, 322, 106 S.Ct. 2548, 2552, 91 L.Ed.2d 265.

Genuine disputes are those in which the evidence is such that ~~re~~ a reasonable jury could ~~not~~ return a verdict for the non-movant. It is not part of the court's function when deciding a motion for summary judgment, to decide issues of material facts, but rather determine whether such issues exist to be tried. See Anderson v. Liberty Lobby 477 U.S. 242, at 249, 106 S.Ct. 2135, 91 L.Ed.2d 202. The evidence of the non-movant is to be believed, and all justifiable inferences in the matter at hand are to be drawn in his favor. The inferences in this case are to be drawn in the plaintiff's favor since he is the non-moving party, and where a reasonable fact finder may, "draw more than one inference from the facts, and that inference creates a general issue of material fact, then the court should refuse to grant summary motion. See Barfield v. Brierton 883 F.2d 923, 933-34. Due to there being a genuine dispute concerning the assault on the plaintiff summary judgment for the defendant's must be denied. The only way a summary judgment should be granted is when a reasonable jury could not find in favor of the non-movant, and that no genuine issue of fact exists. See Beal v. Paramount Pictures Corp. 20 F.3d 454, 459.

Furthermore the plaintiff/non-moving party in this action has not had the chance to partake in the discovery process. In compliance with this court's order, (see document 47-1 filed on 8/15/05 on pages 5 of 6, #11.), the plaintiff has not filed a request for discovery. In the event that the ~~pleadings~~ aforementioned pleadings are not sufficient to withstand a summary judgment motion the plaintiff seeks for this court to deny the motion or at least stay it until the plaintiff has obtained the necessary information. Rule 56(f), Fed. R. Civ. P. Allows for the denial or stay of a motion for summary judgment until necessary information has been acquired. Furthermore "where the facts are in possession of the moving party, a continuance of a motion for summary judgment should be denied as a matter of course". See Costlow v. United States 552 F.2d 560, 564; Baker v. McNeil Island Correction Center 859 F.2d 124, 127; and Jackson v. Proctor 789 F.2d 307, 312. Finally "summary judgment should only be granted when, after an adequate time for discovery,

a party fails to make a showing sufficient to establish the existence of an essential element of that party's case." See Nolen v. Boca Raton Community Hospital Inc. 373 F.3d 1151, 1154; Celotex Corp. v. Catrett 477 U.S. 317, 322. Therefore the defendant's motion for summary judgment should be denied.

II. ELEMENTS OF SECTION 1983

The initial inquiry in any section 1983 action focuses on whether two essential elements to a section 1983 action are present:

(1) whether the person engaged in the conduct complained of was acting under color of state law; and (2) whether the alleged conduct deprived a person of his rights, privileges, or immunities guaranteed under the constitution or laws of the United States. See Duke v. Massey 87 F.3d 1226, 1231.

OFC. McDonald, Sgt. McKenzie, OFC. Pate and OFC. Speight were all on duty correctional officers working at Washington C.I. Nurse Kent was an on duty nurse working for the medical department of a correctional institution. They were all acting under the color of state law.

As to the second element OFC. McDonald did engage in conduct which violated the plaintiff's 8TH Amendment Right to Freedom from Cruel and Unusual punishment by beating the plaintiff. The rest of the defendant's violated the plaintiff's 8TH Amendment Right due to their deliberate indifference to OFC. McDonald beating the plaintiff. OFC. McDonald further violated the plaintiff's 4TH Amendment Right to Freedom from Assault by same beating.

III. EIGHTH AMENDMENT'S PROSCRIPTION OF CRUEL AND UNUSUAL PUNISHMENT.

Convicted prisoners are protected from misuse of force by the Cruel and Unusual Punishment Clause of the Eighth Amendment. Whether force violates the eighth Amendment depends entirely on whether it was "applied in a good-faith effort to maintain or restore discipline or maliciously and sadistically to cause harm." See Hudson v. McMillian 503 ___ 112 S.Ct. 995, 998-99. When prison officials use force maliciously and sadistically to cause harm, contemporary standards of decency are always violated, unless the "force" is de minimis. A correctional officer beating an inmate unnecessarily does not constitute de minimis force.

Although not every malevolent touch by a prison guard gives rise to a federal cause of action, when a prison official uses force maliciously and sadistically to cause harm the constitution is violated. If there is no need for force the constitution may be violated by relatively small amounts of force even a push or a shove. See Felix v. McCarthy 939 F.2d 699, 701-02 (throwing a prisoner into a wall without reason violated the 8TH Amendment.) Bee v. DeKalb County 679 F.Supp 1107, 1109, 1113 (Allegation of unprovoked blow to the face created factual issue as to excessive force.) Jones v. Huff 789 F.Supp. 526, 536.

Prisoners need not prove a serious or significant injury to establish an Eighth Amendment claim violation. The degree of injury is "relevant to the Eighth Amendment inquiry but does not end it. See Hudson v. McMillian 503 U.S. 32, 112 S.Ct. 995, 998-99; and McHeny v. Chadwick 896 F.2d 184, 187.

In the present case the plaintiff was masturbating while he spoke with nurse Kent. Nurse Kent told Ofc. McDonald who was the officer escorting her through quad 4. They left. Ofc. McDonald and Ofc. Pate returned and handcuffed the plaintiff behind his back. Upon entering the Disciplinary Room/medical room, the plaintiff observed that Nurse Kent, Sgt. McKenzie, and Ofc. Speight were already in this room. The plaintiff was told to stand across from Nurse Kent. Ofc. McDonald made a little speech about ~~dispepe~~ disrespecting the nurse then proceeded to beat the plaintiff. No force was necessary and beating the plaintiff while handcuffed behind his back and ~~subdued~~ not a threat clearly violates the plaintiff's Eighth Amendment Use of force on a prisoner who is handcuffed and not a threat is unconstitutional. See Jones v. Huff 789 F.Supp. 526, 530 (slapping and punching handcuffed inmate violated the Eighth Amendment); Caudle-El v. Peters 727 F.Supp. 1175, 1180.

The defendants claim that the injuries sustained by the plaintiff are insufficient to state a claim. The plaintiff's visible injuries were his bruised ear and scalp. But infliction of injuries such as bruises and abrasion will be found unconstitutional if there is no need of force, or if there is evidence of malicious and sadistic behavior by the defendants. See Molton v. City of Cleveland 839 F.2d 240, 249-50 (bruises, abrasions, and a nose bleed stated a claim); Williams v. Omodt 640 F.Supp. 120, 121-23; (damages awarded for "bruises, contusions, swelling, and considerable pain," where there was no justification for any use of force.

Defendant's claim insufficient corroborating evidence as far as injuries sustained. That a person cannot be punched in the abdominal area 6 or 7 times without bruising this area. Such a claim is false for correctional officers experienced in abuse can pretty much leave no marks. Although the plaintiff had sustained no bruises at the time that he was checked by nurse Conger, he experienced considerable pain in his abdominal area for days where every movement caused the plaintiff enhanced pain. The defendant claim that being on one's head would result in a fracture, or atleast swelling or significant bruising. The plaintiff was dropped on his head. Once his head hit the ground it slid forward. The plaintiff could not see if he had a bruise on his head but the plaintiff head and neck hurt. Defendant's claim is unsubstantiated because it would all depend on how far from the ground he was dropped, and the point of impact of where his head hit the ground. Although the plaintiff is no expert, he knows from experience that being dropped on your head doesn't have to leave any ~~fractures~~ fractures because he did not fracture his. As to nurse Conger noting the plaintiff "condition on admission" was good. Such an assessment has no bearing. All that is relevant is the plaintiff's bruised ear and scalp which resulted from the assault.

As for staff observing the plaintiff's appearance as good after the beating, it also has no bearing. Nurse Conger did not have any option to note pain or discomfort. The nurse must circle one of the following options, "Good, Fair, Poor, Shock, bleeding, or comatose". Therefore defendant's claim that due to Nurse Conger's assessment of "Good" and changing it's meaning into the plaintiff not experiencing pain and discomfort is a fraudulent claim and attempt to mislead the court.

The Defendant's keep trying to bring up the fact that less than 12 hours after making his complaint to the Captain, that the plaintiff participated in recreation. This is another attempt to mislead the court again. This is being brought up to the court to make it seem that since he went to recreation that he was out running around having fun playing basketball or something. As a C.M. (Close Management) inmate recreation is simply going outside and standing in a 10 X 6 cage. The plaintiff went outside simply to tell the inmates what was done to him and to show them his bruised ear and scalp in case the nurse never really noted it. Due to the plaintiff only going outside to explain his beating and show his bruises the defendant's repeated references to recreation are entirely irrelevant.

The Defendant's claim that according to inspector Jaw "inmates are aware that allegations of physical abuse will often result in an I.G. transfer", and "that it is not uncommon for inmates to fabricate" such allegations. The defendant's are again trying to mislead this court, by insinuating that the defendant plaintiff fabricated the allegation of staff abuse in order to obtain a transfer. First of all where did the plaintiff's bruised ear and scalp come from or did nurse Conger note this on his examination document for the fun of it, as well as the other document made by the psychologist on 12/6/02 where the plaintiff's ear still displays a "Greenish-Yellow Pallor". See exhibit 3. Second if the plaintiff was just trying to get a transfer that was obtained a long time ago, so, that eliminates that. And last if the plaintiff had fabricated his claim why did inspector Jaw feel the need to fabricate his investigation report by claiming that the video tape recording for November 28, 2002, from 7:AM to 11:AM shows the plaintiff neither came out of his cell nor did anyone enter his cell, yet now the defendant's have a medical report alleging that the plaintiff was taken out for a medical evaluation. It seems that the Defendant's are the one's who are fabricating claims and evidence.

The Defendant's attempt to invoke a de minimis injury defense. An Eighth Amendment Claim is not weighed by the extent of injury sustained but by "whether the force was applied in a good-faith effort to maintain or restore discipline, or maliciously and sadistically to cause harm". See Hudson supra; Whitley v. Albers 475 U.S. 312, 320-21, 106 S.Ct. 1078; and Cummings v. Malone 995 F.2d 817, 822. The extent of injury is relevant to damages but is not a prerequisite to suit. See Gray v. Spillman 925 F.2d 90, 93; Felix v. McCarthy 939 F.2d 699 (minor injuries are actionable when the force

is completely unjustified); and Henson v. Thezan 698 F.Supp. 150, 152 (Allegation that a prisoner was abused for hours could not be dismissed on absence of injury.) Therefore even if the plaintiff could not show injury, (which he can) the plaintiff's claim could not be dismissed based on an absence of injury, so the defendant's defense of de minimis injury is invalid.

As to the defendant's Allegation that the plaintiff now attempts to attribute malice to the defendants where he had not done so before. The plaintiff in his Amended complaint on page 8-B he seeks to sue the defendants as a result of unconstitutional punishment perpetrated by the defendants with malicious purposes. The plaintiff is not just adding this element to his claim. Also contrary to the defendant's claim, the plaintiff did not bring a last ditch effort to save his claim by bringing Ofc. McDonald's motive to the courts attention. The plaintiff satisfies the malice element just by Ofc. McDonald having beaten the plaintiff while he was handcuffed behind his back, when he posed no threat, and no force was necessary. See Oliver v. Collins 914 F.2d 56 ("testimony that a beating was completely gratuitous and that no force was necessary would support a finding of malice.")

As to the Defendants continuous references of the plaintiff's Allegations being supported only with self-serving statements. Such an Allegation is preliminary, and based on the fact that the plaintiff has not been able to conduct any discovery yet nor has he been given a chance to contact other prisoners who were present and witnessed the nurses screaming about the plaintiff masturbating and how all the officers were ignoring the plaintiff's Attempts to declare staff assault until the majority of the inmate's had to kick on the door so the plaintiff's claims of staff assault would finally be recognized.

As for Nurse Kent's "records" the plaintiff concedes that nurse's made daily medical rounds in close management units without exception to weekends or holiday's, but sick call evaluations are never conducted on weekends or holidays. The sick call procedure is established in the sick call procedure of F.S 945.6037, procedure 403.006(4). An inmate has to initiate the sick call process by submitting a sick call form, then being seen the next working day. Procedure 403.006(4)(g) clearly state's "Health care staff performing sick-call must have the inmate's record available at the time the inmate is evaluated." No Nurse is Authorized to have inmate's pulled out for a sick call evaluation when the inmate has not previously submitted a sick call form. Verbally complaining to the nurse, does not justify for nurses to examine inmate's spontaneously as the Nurse Kent claims she did with the plaintiff. Such Actions specifically violate Florida Statute's as well as the Department of Corrections Medical Procedures. Inmate's Medical charts are not kept in the dorms and a nurse conducting a sick call evaluation must possess the inmate's medical chart which she is examining. This is the entire

point of the sick call procedure. This nurse was not scheduled to see or examine the plaintiff on said date, neither had the plaintiff submitted a sick call form for which he had yet to be seen. Therefore Nurse Kent was not in possession of the plaintiff's medical chart. For a nurse who was so "conscientious" about documenting "exams to address grievances or complaints by inmates," both her violating sick call procedures and not possessing the plaintiff's medical chart completely contradict her statements made in her Affidavit. For her to claim she was "conscientious" and then contradict herself with her actions shows she was really not "conscientious," and shows her type of character. A nurse who is so "conscientious" would not be pulling inmates out in violation of said procedures set forth in F.S. 945.6037 and procedure 403 (06/14). This Nurse Kent was aware prior to the plaintiff's being taken out of his cell what would take place in that room. Nurse Kent instead of documenting the beating which she witnessed, chose her part and decided to falsify medical reports attempting to justify the plaintiff's being pulled out of his cell. This is why the time on her paperwork was an estimate and not exact. Nurse Kent is as guilty as the rest of the defendants in this action by her deliberate indifference.

IV. TITLE 42 U.S.C. § 1997e(e).

This provision of the P.L.R.A. states:

"No federal civil action may be brought by a prisoner in a jail, prison, or other correctional facility, for mental or emotional injury suffered while in custody without first showing of physical injury."

Section 1997e(e) clearly illustrates actions requesting damages for emotional or mental injury, and only effects actions brought solely for mental or emotional injury. This provision does not impair a prisoner's right to bring action for physical injury. Congress made the obvious determination that suits brought solely for mental and/or emotional injury were more likely to be without merit than cases in which a prisoner sustains some kind of injury. See Harris v. Gardner 216 F.3d 970, at 1005-06.

In the present action the plaintiff brought action for Assault and battery, excessive force which consisted of malicious and sadistic nature, and as a result of being beaten, for emotional, psychological, and mental pain, fear, and anguish.

The plaintiff in the present case sustain injury to his abdomen, head, and ear. The bruise on his ear and scalp being the only visible injuries. Said bruises to the plaintiff's ear and scalp resulted from a physical beating. In the defendants previous special report they cited several cases. None of which are related to the plaintiff's claim. Most were concerning cases of medical nature which is why the defendants have retracted said cases in this supplemental special report. The defendants could not find one case where the courts labeled any injury received as a direct

Result of a beating a de minimis injury, neither can they find one.

Even considering the defendant's claims as to this de minimis injury standard it would only apply to a plaintiff's seeking compensatory damages and for only the emotional, mental, and psychological claims. Even then the plaintiff would still be able to seek punitive damages for emotional, mental, and psychological injury. See Allah v. Al-Hafeez 226 F.3d 247; and Searles v. VanBebber 251 F.3d 869. Therefore the de minimis injury standard only applies to compensatory damages for emotional, mental, and psychological injury. See Molton v. City of Cleveland 839 F.2d 240, 249-50; and Williams v. Omodt 640 F.Supp. 120, 121-23.

Furthermore 42 U.S.C. §1997e(e) does not specify that an injury must be more than de minimis. See 42 U.S.C. §1997e(e).

CONCLUSION

WHEREFORE, based on the foregoing, the Plaintiff respectfully requests that this Honorable Court accept this response to the Defendant's Supplement to their Special Report in support of a denial of summary judgment in the Plaintiff's favor.

Respectfully Submitted,

R-Ba

Ramon Borroto X27467

FLORIDA STATE PRISON B-1316

7819 N.W. 228TH St.

Raiford, FL 32026

OATH OF VERIFICATION

UNDER PENALTIES OF PERJURY, I RAMON ARMAS BORROTO, JR., SWEAR that I have read the foregoing and that it is true and correct.

2/15/06

R-Ba

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that a copy of the foregoing has been delivered to the hands of an institution official to be mailed by U.S. Mail to Joy A. Stubbs, at the Office of the ATTORNEY GENERAL, The Capitol - PLOI, Tallahassee, Florida, 32399-1050 on this _____ day of February, 2006.

R. B. B.

Ramon Borreto

**REPORT OF INVESTIGATION
OFFICE OF THE INSPECTOR GENERAL
DEPARTMENT OF CORRECTIONS**

INVESTIGATION # 02-13942

CORRECTIONAL INVESTIGATOR: Tim Yaw

DATE OF REPORT: March 5, 2003

DATE OF INCIDENT: November 28, 2002

CLASSIFICATION OF COMPLAINT/INCIDENT: Physical Abuse

LOCATION: Washington Correctional Institution

COMPLAINANT: Scott, Timothy
Correctional Officer Captain
W/M, DOB: 10/28/62

VICTIM(S): Borroto, Ramon
DC# X27467
W/M, DOB: 11/22/81

SUBJECT(S): McDonald, Larry
Correctional Officer
B/M, DOB: 11/08/53

WITNESS(ES): McKenzie, Channing
Correctional Officer Sergeant
W/M, DOB: 12/07/67

Pate, Harold
Correctional Officer
W/M, DOB: 01/07/69

Kent, Donna
Sr. Licensed Practical Nurse
W/F, DOB: 08/08/64

Butts, Travis
Correctional Officer
W/M, DOB: 07/06/69

EXHIBIT 1

Investigative Report # 02-13942

Page 2

WITNESSES CONTINUED:

Anderson, Cleo
Correctional Officer
W/M, DOB: 06/15/50

Speights, Mervis
Correctional Officer
B/M, DOB: 06/01/67

Brooks, David
DC#-982838
B/M, DOB: 07/17/73

CASE SUMMARY:

Inmate Borroto reported to Captain Scott on November 29, 2002, at about 12:15am, that he had been physically abused on the morning of November 28, 2002. Captain Scott reported the information, which was later forwarded to the Tallahassee Field Office on December 2, 2002. The case was assigned to Inspector Jon Kraus on December 2, 2002, and reassigned to Inspector Tim Yaw on January 27, 2003.

Captain Scott reported that he was making his rounds in "G" dormitory at about 12:15am on November 29, 2002, when Inmate Borroto told him that he had been abused earlier the day before. He had Inmate Borroto examined by medical where it was found that Inmate Borroto had a bruised left ear lobe with redness. Inmate Borroto stated to investigators that he was taken from his cell at about 8:45am, on November 28, 2002, and into the hearing room where Officer McDonald hit him with his fists and then picked him up, turned him "upside down" and dropped him on his head. When Officer McDonald attempted to hit his head on the floor again, Nurse Kent told him to stop. Sergeant McKenzie and Officer Pate were also in the room at the time. Inmate Borroto was transferred to Santa Rosa Correctional Institution on December 19, 2002.

Sergeant McKenzie, Officer Pate and Nurse Kent stated that the incident did not happen as did Officers Butts, Anderson and Speights who were on duty in "G" dormitory on November 28, 2002. Officer McDonald denied physically abusing Inmate Borroto. Inmate David Brooks was Inmate Borroto's cellmate at the time and he refused to give a statement.

Inmate Borroto was given a Computerized Voice Stress Analysis (CVSA) which indicated he was not deceptive when he responded "Yes" when he was asked if other staff were present when Officer McDonald hit him and if Nurse Kent was present when Officer McDonald dropped him on his head.

Investigative Report # 02-13942

Page 3

Review of the video tape-recording of quad four in "G" dormitory during the morning of November 28, 2002, revealed that Inmate Borroto was not taken out of his cell and that no one entered his cell.

SUBJECT: Larry McDonald, Correctional Officer

The evidence obtained during the course of this investigation is not sufficient to support the allegation of *Physical Abuse* by Officer McDonald. This is based on the following:

- **Witness Statements:**

Inmate Ramon Borroto stated that he was taken out of his cell at about 8:45am, on November 28, 2002, and into the hearing room where Officer McDonald hit him with his fists and then picked him up, turned him "upside down" and dropped him on head. When Officer McDonald attempted to hit his head on the floor again, Nurse Kent told him to stop.

Sergeant Channing McKenzie, Officer Harold Pate and Nurse Donna Kent indicated that the alleged incident did not occur.

Officers Travis Butts, Cleo Anderson and Mervis Speights were on duty in "G" dormitory on November 28, 2002, and they indicated that they did not see Inmate Borroto being abused, nor did they remember him coming out of his cell that day.

Inmate David Brooks would not give a statement concerning the incident.

- **Written Documents:**

A CVSA report from Inspector James Keen indicated that Inmate Borroto was not deceptive when he answered "Yes" when he was asked if other staff were present when Officer McDonald hit him and if Nurse Kent was present when Officer McDonald dropped him on his head.

- **Other Pertinent Information:**

Review of the video tape-recording of quad four in "G" dormitory during the morning of November 28, 2002, revealed that Inmate Borroto was not taken out of his cell and that no one entered his cell between the hours of 7:00am and 11:00am.

Investigative Report # 02-13942

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- Subject Statements:

Officer Larry McDonald denied physically abusing Inmate Borroto.

ALLEGATION:

Inmate Ramon Borroto alleged that Officer Larry McDonald physically abused him on the morning of November 28, 2002, in "G" dormitory.

FINDING(S):

In an affidavit taken on November 29, 2002, and during a sworn, tape-recorded interview conducted on December 19, 2002, Inmate Ramon Borroto indicated the following:

At about 8:45am, on November 28, 2002, he was taken out of his cell by Officers McDonald and Pate and escorted to the hearing room. Sergeant McKenzie and Nurse Kent were in the room when they arrived. Officer McDonald began hitting him in the stomach and head, while the others watched. Officer McDonald then put his (*Borroto's*) head between his knees and grabbed him by his feet, slamming his head into the floor. As Officer McDonald grabbed his feet to slam his head into the floor again, Nurse Kent told him to stop. Nurse Kent and Sergeant McKenzie left the room and Officers McDonald and Pate escorted him back to his cell. He reported the incident on November 29, 2002, to Captain Scott who was the supervisor of the midnight shift. He received a bruise on his left ear from the abuse. (Exhibit A-1) (Exhibit B-1)

In an incident report dated November 29, 2002, Captain Timothy Scott reported the following:

At about 12:10am on November 29, 2002, Inmate Borroto declared a medical emergency during which he stated that four officers took him into the "room with no cameras" at about 8:45am, on November 28, 2002, and Officer McDonald hit him and slammed his head into the floor. Inmate Borroto indicated that Nurse Kent was present during the incident. He had Inmate Borroto examined by the medical department. (Exhibit A-2)

Medical records indicated that Inmate Borroto was examined by Nurse Conger at 12:26am, on November 29, 2002, and he was found to have a small edema or mark on the rear of his head and slight bruising and redness on his left ear lobe. (Exhibit A-3)

Inspector James Keen conducted a Computerized Voice Stress Analysis (*CVSA*) on Inmate Borroto. In his report dated January 15, 2003, Inspector Keen indicated that Inmate Borroto was not deceptive when he answered "Yes" when asked if other staff were present when McDonald hit his ear and if Nurse Kent present when McDonald dropped him on his head. (Exhibit A-4)

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Records revealed that Officers Travis Butts, Cleo Anderson and Mervis Speights were on duty in "G" dormitory on the morning of November 28, 2002, and they gave sworn, tape-recorded statements on February 4, 2003, indicating they did not witness any abuse of Inmate Borroto.

(Exhibits B-2, B-3 & B-4)

During sworn, tape-recorded interviews conducted on February 4, 2003, Nurse Donna Kent, Sergeant Channing McKenzie and Officer Harold Pate indicated that they were not in a room with Inmate Borroto or any other inmate when such an incident happened. All said they did not see Inmate Borroto get physically abused.

(Exhibits B-5, B-6 & B-7)

Records revealed that Inmate David Brooks was Inmate Borroto's cellmate on November 28, 2002, and upon attempting to interview him on February 18, 2003, concerning the allegation, he refused to give a statement.

Records revealed that Inmate Borroto was housed in "G" dormitory, quad four, cell 101 lower, on November 28, 2002. Review of the video tape-recording of quad four from 7:00am until 11:00am on that date, revealed that Inmate Borroto did not come out of his cell, nor did anyone enter his cell during that time. The video revealed Officers McDonald and Speights entering the quad at 8:43am to conduct a security check. They departed the quad at 8:46am. Nurse Kent did not enter the quad during that time.

(Exhibit B-9)

"G" dormitory logs for November 28, 2002, recorded activity that was consistent with the video recording of quad four. The logs indicated that Nurse Kent entered "G" dormitory for sick call rounds, but it was not indicated at what time she departed the dormitory.

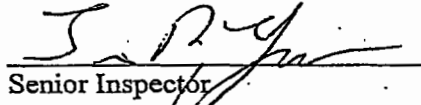
(Exhibit A-5)

During a sworn, tape-recorded interview conducted on February 4, 2003, Officer Larry McDonald indicated that he did not know Inmate Borroto and he denied physically abusing him or any other inmate.

(Exhibit B-8)

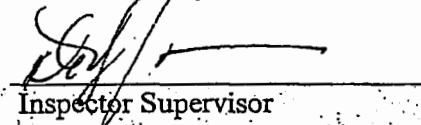
INVESTIGATION # 02-13942

SIGNATURE:

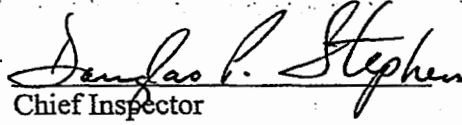

Senior Inspector

2-27-03
Date

REVIEWED BY:


Inspector Supervisor

2/27/03
Date


Chief Inspector

3/3/03
Date

STATE OF FLORIDA
DEPARTMENT OF CORRECTIONS

PLEASE PRINT

EMERGENCY ROOM RECORD

AUTHORIZATION FOR HEALTH CARE SERVICES

The undersigned, a patient in this health care facility, has had explained to me and understand the nature of my condition. I hereby authorize the medical staff to administer such treatment as is necessary, and to perform evaluation and treatment and such additional health care services as are considered necessary on the basis of findings during the course of said health care service. Any tissue or parts surgically removed may be disposed of by the facility in accordance with accustomed practice. I hereby certify that I have read and fully understand the above authorization for health care services; the reasons why the above-named health care service is considered necessary, its advantages and possible complications, if any, as well as possible alternative modes of treatment, which were explained to me by J. Conger SRN. I also certify that no guarantee of assurance has been made as to the results that may be obtained.

Signature of Patient X J. Conger Date 11-29-02 Time 0026Witness Signature/Stamp J. Conger J. CONGER, SRN Date 11-29-02 Time 0026Brief History: Washington CI

I/m alleges assault by staff @ approx. 0845 on 11-28-02.
See DC4-708. States he was hit on back of head, ears,
& abdomen.

If accident, state where, when and how injured; if illness, describe:

VS: T — F — P 96 /Min. R 20 /Min. BP 140, 92 Wt. — lbs.Condition on Admission (Circle): Good Fair Poor Shock Bleeding ComatoseFindings/Treatment: Rear of head + abd. 5 edema or marks. ② ear lobe 2 bruising, edema +
approx. 1cm red line.Labs Ordered: ØTherapy Ordered: ØLab Reports: Ø

Inmate Response to Treatment:

WNL

Diagnosis:

alleged assault

Condition on Discharge:

good.

Discharge Instructions and Education:

F/U sick call PRNDisposition (Circle): Population Confinement Infirmary Hospital Rescue Other (explain):Health Care Provider's Signature and Stamp: J. Conger J. CONGER, SRN Date/Time: 11-29-02 0026Reviewing Physician's Signature and Stamp: J. Spann J. SPANN, MD Date/Time: —

II
C Borroto, Ramon Armas
C DC# X27467
I W/M DOB: 11/22/81
E Allergies: POLLEN, NKDA
D

Distribution:
White - Health Record
Canary - Emergency Room Record
Pink - Local Requirements

Ex: A-3

EXHIBIT 2

FLORIDA DEPARTMENT OF CORRECTIONS
 INFIRMARY PROGRESS RECORD
 Institution: WASHINGTON CORRECTIONAL INSTITUTION

DEFENDANT'S
 EXHIBIT

Q-1

Date/Time	Discipline (use codes)	INCIDENTAL NOTE: MHISE, MHIFU
02 835-0905 6/02	P Y	S: "I DON'T KNOW WHY (I CUT MYSELF); I DON'T WANT TO TALK ABOUT IT...I DON'T WANT TO KILL MYSELF//SMILING//...I'M FREEZING; THEY TOOK MY BLANKET AWAY...I WAS TEARING UP THE MATTRESS BECAUSE I WAS TRYING TO GET INTO IT TO GET WARM...I WAS HIT IN THE STOMACH & THE HEAD BY OFCR McDONALD IN THAT ROOM (INTERVIEW ROOM) OF G-DORM ON THANKSGIVING MORNING...SGT MACKENZIE, OFFICER PATE, AND NURSE KENT SAW IT...HE HIT MY EAR//DISPLAYS LEFT EAR—NOTED: GREENISH-YELLOW PALLOR//I SWALLOWED A RAZOR THE OTHER DAY; IT WAS ABOUT THIS BIG//GESTURES WITH FINGERS TO INDICATED ABOUT 1/2 INCH IN LENGTH//
2/2		<p>O: 21 y.o. H/M serving 16 years, 6 mos (TRD: 5/29/15) for fleeing or attempting to elude a LEO at high speed or with wanton disregard; grand theft 3rd degree of motor vehicle</p> <p>SIGNIFICANT MENTAL HEALTH HISTORY: Inpatient/outpatient treatment prior to prison: NONE Prison Inpatient: NONE; remanded to FDOC on 11/5/01; classified as S-1 at NFRC; sent to HOLMES CI where he demonstrate poor institutional adjustment as evidenced by the issuance of 17 Disciplinary Reports (DRs) between 1/1/02 and 7/30/02 for obscene/profane act (2), destruction of state property (2), disobeying regulations (2), insufficient work (1), possession of contraband (2), disobeying order (1), disorderly conduct (5), disrespect to officials (1), and lying to staff (1). Inmate Borroto is currently classified as a CM1 inmate. Inmate complained, "I'm freezing!" Due to behavioral problems noted on DC6-229b, Inmate Borroto had been placed in an Alternate Medical Cell in G-Dorm due to the lack of an available IMR. His blanket was removed by security for security reasons. He was escorted to an IMR around 9 pm last night where he began to tear at the mattress; nursing and security staff ordered the removal of the mattress around midnight. The inmate proceeded to demand a mattress and blanket and kicked the door most of the night.</p> <p>PRIOR PSYCHOLOGICAL TESTING RESULTS: IQ: Beta-IIR = 117 (11/6/01); BHS: 0 (11/6/01) MMPI-2: Not administered</p> <p>CURRENT MSE Appearance/Behavior: well-nourished, well-hydrated, muscular, multiple tattoos, dressed in shroud; adequately groomed; good eye-contact, smiling; no unusual mannerisms or unusual movements observed. Orientation: Alert, oriented to person, place and situation Speech: rate, tone, articulation were within normal limits. No defects in word production or organization; somewhat resistant to questioning stating he either "did not know" or did not want to discuss concerns Content of speech primarily focused on obtaining mattress and blanket. Thinking: No evidence of confusion; clear, logical, coherent; goal-directed, "I want a blanket!" Attention/Concentration/Memory: Not formally tested, but appears superficially adequate. Estimation of Cognitive Functioning: Average Mood/Affect: Focused on answering questions regarding physical comfort as opposed to mood, "I'm freezing!" Security notes on DC6-229b reflect anger. Current affect: broad. Perceptual disturbances: Not responding to internal stimuli. Did not endorse A/V hallucinations. Delusions: Possibly persecutory; claims he was "hit" by an officer in the presence of 3 other FDOC staff. SI/HI: Did not endorse suicidal ideations. Stated he did not want to kill himself but then stated he swallowed a razor several days ago. Insight/Judgment: poor/inadequate. Brief Psychiatric Rating Scale: No evidence of somatic concern, anxiety, conceptual disorganization, guilt feelings, tension, odd mannerisms or posturing, grandiosity, depressive mood, hostility, suspiciousness, hallucinatory behavior, motor retardation, unusual thought content, blunted affect, excitement, or disorientation.</p>
		<p>A: Intellectual Assessment Interpretation: Inmate Borroto's performance on the BETA-IIR is suggestive of intellectual functioning in the high average (bright) range.</p> <p>THIS INMATE HAS NO PRIOR MENTAL HEALTH HISTORY. HE WAS REMANDED TO FDOC WITH A LONG SENTENCE RELATIVE TO HIS AGE. HE ACCUMULATED 17 DR'S AT HOLMES CI WITHIN A SEVEN (7) MONTH TIME FRAME. HE WAS ULTIMATELY SENT TO WASCI FOR PLACEMENT IN</p>

RECEIVED
 SANTA ROSA CORRECTIONAL INSTITUTION

DEC 27 2002

MEDICAL

Inmate Name BORROTO, RAMON *Codes: M= MD/CA/ARNP
 # X27467 Race/Sex H/M
 Date of Birth 11/22/81

Institution WASHINGTON C.I.

Allergies _____

INFIRMARY PROGRESS RECORD

DC4-714A (6/99 Page 1 of 2)

P = PSYCHIATRIST
 Y = PSYCHOLOGY
 N = NURSING
 D = DENTAL

S - Subjective Data
 O - Objective Data
 A - Assessment S/O Data
 P - Plan

EXHIBIT 3